IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4325 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH SHIVBHAGWAN AGRAWALA

Versus

TALATI-CUM-MANTRI

Appearance:

1. Special Civil Application No. 4325 of 1991

MR SH SANJANWALA for Petitioner No. 1

MR MC SHAH for Respondent No. 5

Ms.Manisha Lavkumar, Asst.GOVERNMENT PLEADER for Respondents No. 1-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/02/2002

ORAL JUDGEMENT

The petitioner has preferred this petition challenging the order passed by all the lower

authorities, namely, Deputy Collector, Dist.Collector and the State Government in exercise of their powers under Gujarat Land Revenue Rules.

2. The short facts of the case are that one entry was mutated being Entry No.2607 dated 27.5.1983. After the mutation of the said entry the same was certified on 30.6.1983. Thereafter, suomotu powers were exercised and as per the notice dated 1.8.84 the petitioner was called upon to show cause as to why the entry should not be cancelled. The main ground of the notice was that no permission under Urban Land (Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act") is obtained. Another ground was that the sale deed is not produced. The third ground was that notice under section 135D of the Act is not served upon the person concerned and the fourth ground was that the land is belonging to Devastnam and the sale is shown to have been made by the pujari and therefore neither the pujari has power to sell the land nor in any case the said sale can not be made without permission of the Charity Commissioner. Ultimately, the order dated 8.9.84 was passed by the Deputy Collector, Vadodara whereby the said entry was cancelled. Against the said decision of the Deputy Collector appeal being Appeal No.4/87 was preferred and the said appeal came to be dismissed on 14.8.87 against which revision preferred by the petitioner herein being Revision Application No.7/89 and the said revision ultimately by order dated 21.11.1990 is dismissed.

3. It may be noted that the appellant before the Deputy Collector who preferred Appeal No.5/87 claimed to be the purchaser of the land in question had challenged the decision of the appellate authority before the State Government by preferring Revision Application No.6/89 and the said revision is also dismissed but no writ petition is preferred before this court nor any reference is made in the present petition about the same. The order came to be passed by all the authorities mainly on the ground that no permission of the competent authority is obtained under the Act, the sale deed was not produced before Talati and that no notice under section 135D of the Bombay Revenue Code was served upon the person concerned and it is also observed by the authorities that no permission of the Charity Commissioner was obtained and in any case the sale could not have been made by the pujari.

4. Mr.Sanjanwala appearing for the petitioner placed reliance on the judgments of this court in the matter of Siddharthbhai B.Shah vs State of Gujarat reported in

1999(2) G.L.H.82 and in the matter of Evergreen Apartment Coop.Housing Society vs Special Secretary, Revenue Department, Gujarat State reported in 32(1) GLR 113 for contending that the observations made by the Revenue authority regarding the validity of the sale would come against him in other proceedings and, therefore, this court should interfere with the orders passed by the State Government and lower revenue authorities. I am afraid that this contention of Mr.Sanjanwala can not be accepted. In the present case the observations made by the authorities are only to be construed for the purpose of revenue entry only and further it is well settled that the observations made by the revenue authority for the purpose of cancelling the entry would not prejudice the case of either party in appropriate proceedings before appropriate forum.

5. This court is not expressing any opinion on the findings of the lower authorities. However, it is well settled that the revenue entries are having the value for fiscal purposes and therefore they are having presumptive value in nature and by mutation entry or cancellation thereof the title of the land is not in any manner affected. If any party is aggrieved by the mutation or cancellation thereof, for the purpose of establishing the title the proper remedy would be competent civil court. In the present case the lower authorities have concurrently found and therefore this court finds no case to interfere in exercise of powers under Art

of the Constitution, and if the petitioner is so advised, he may prefer a civil suit for establishing the title in accordance with law. It is needless to clarify that the observations made by the revenue authorities in the impugned order shall not prejudice the case of either party in appropriate proceedings before appropriate authority.

6. Subject to aforesaid observations, this petition is dismissed and rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

1.2.2002 (JAYANT PATEL,J)

STARTORDER
CR.MA953501J

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9535 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HINDUSTAN PENCIL LTD

Versus

K.B.PATEL

Appearance:

1. Criminal Misc.Application No. 9535 of 2001

MR ASHISH H SHAH for Petitioners No. 1-2

MR RAJESH K KANANI for Petitioners No. 1-2

MR VIPUL PANCHOLI Ld. APP for Respondents No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/02/2002

ORAL JUDGEMENT

1. Heard Ld. counsel appearing for the petitioners and Ld. APP Mr. Pancholi for respondent no. 2-State.

2. Rule. Mr. Pancholi learned APP waives service of rule on behalf of respondent no. 2-State. By consent of learned counsel of both the parties, this matter is taken up for final hearing today.

3. Ld. counsel for petitioners has submitted that in view of the provisions of sub-section 2 of sec. 204 of Cr.P.C., the proceedings should be turned down as the complainant has not named any witness in the complaint. The petitioners are prosecuted by Govt. Labour Officer by a private complaint for the offence punishable under sec. 23 of Contract Labour (Regulations & Abolition) Act, 1970. Considering the contents of the application, the submissions made by the learned counsel is not accepted. The case against the petitioners is based on documents and the complainant himself is the only sufficient witness to prove the case of prosecution and such complaint should not be turned down on technicality of a procedural infirmity. There are contrary views qua the principle upon which the present petitioners intends to rely. Ld. APP has rightly placed reliance on the decision in the of AP Jain vs. CN Jotwani reported in 1976-77 Mah. Cr.R. (Bom.) 239. However, the ld. trial Judge ought not to have issued process against the accused no. 2- Chairman & Managing Director of the company as he is stationed at Bombay. Undisputedly, he is aged above 80 years and the officers of the Company and Executive Directors dealing with the affairs of the company stationed at Umargaon where the alleged offence is committed ought to have joined as Accused. So, the proceedings against accused no. 2 can be turned down and can be quashed. The prosecution against accused no. 1-company can still continue. The petitioner no. 1-company and petitioner no. 2 being Chairman & Managing Director both are hereby directed to give a name of the officer or Director who shall appear before the trial court and face the criminal proceedings. The summons served to accused no. 1 should be treated as summons served as per the provisions of section 305 of CrPC which obliges the company to appoint a representative for the purpose of inquiry or trial. The petitioner no. 1company shall comply with the provisions of sub section 2 of section 305 of Cr.P.C. and the learned trial judge shall proceed with the prosecution on appointment of the representative of the company.

In the result, this application is partly allowed. The Criminal Case No. 1067 of 99 pending in the court of the Ld. J.M.F.C., Umbergaon qua the petitioner no. 2 is hereby quashed with above directions. If both the petitioners fail in complying with the above directions, it will be open for the complainant to join the petitioner no. 2 as accused irrespective of this quashing order passed in favour of petitioner no. 2. This application stands disposed of

accordingly. Rule is made absolute to the aforesaid extent only. DS Permitted.

(C.K. BUCH, J.)

mandora/